

RCW 51.52.063 After notice of appeal—Contact with medical providers restricted—Rules. (1) (a) Except as provided in (b) through (d) of this subsection, after receipt of the notice of an appeal that has been filed under RCW 51.52.060(2), the employer and its representatives shall not have contact to discuss the issues in question in the appeal with any medical provider who has examined or treated the worker at the request of the worker or treating medical provider, unless written authorization for contact is given by the worker or the worker's representative. Written authorization is only valid if given after the date that the appeal is filed and expires ninety days after it is signed.

(b) Contact is permitted as necessary for the ongoing management of the claim, including but not limited to communication regarding the worker's treatment needs and the provider's treatment plan, vocational and return-to-work issues and assistance, and certification of the worker's inability to work, unless these issues are in question in the appeal.

(c) If the employer or its representatives wish to communicate with the examining or treating medical providers concerning the issues in question in the appeal, and no written authorization from the worker or the worker's representative has been obtained, the communication must either be:

(i) In writing, including by email, sent contemporaneously to all parties with a distinct notice to the provider that any response must be in writing, including by email;

(ii) In person, by telephone, or by videoconference, at a date and time mutually agreed to by all parties, with the worker or the worker's representative given the opportunity to fully participate; or

(iii) Pursuant to a properly scheduled and noted deposition.

(d) Written authorization is not required if the worker fails to identify or confirm the examining or treating medical provider as a witness as required by the board.

(2) (a) Except as provided in (b) and (c) of this subsection, after receipt of the notice of an appeal under RCW 51.52.060(2), the worker and the representative for the worker, if any, shall not have contact to discuss the issues in question in the appeal with any medical provider who has examined the worker at the request of the employer pursuant to RCW 51.36.070, unless written authorization for contact is given by the employer or its representative. Written authorization is only valid if given after the date that the appeal is filed and expires ninety days after it is signed.

(b) If the worker or the worker's representative wishes to communicate with a medical provider who has examined the worker pursuant to RCW 51.36.070, and no written authorization from the employer or its representative has been obtained, the communication must either be:

(i) In writing, including by email, sent contemporaneously to all parties with a distinct notice to the provider that any response must be in writing, including by email;

(ii) In person, by telephone, or by videoconference, at a date and time mutually agreed to by all parties, with the department, employer, and their representatives given the opportunity to fully participate; or

(iii) Pursuant to a properly scheduled and noted deposition.

(c) Written authorization is not required if the employer fails to identify or confirm the examining medical provider as a witness as required by the board.

(3) Subsections (1) and (2) of this section do not apply to the department.

(a) Except as provided in (b) through (d) of this subsection, after an appeal has been filed under RCW 51.52.060(2), a conference has been held to schedule hearings, and the worker has named his or her witnesses, the department and its representatives shall not have contact to discuss the issues in question in the appeal with any medical provider who has examined or treated the worker at the request of the worker or treating medical provider and has been named as a witness by the worker or their representative unless written authorization for contact is given by the worker or the worker's representative. Written authorization is only valid if given after the date that the appeal is filed and expires ninety days after it is signed.

(b) Contact is permitted as necessary for the ongoing management of the claim, including but not limited to communication regarding the worker's treatment needs and the provider's treatment plan, vocational and return-to-work issues and assistance, and certification of the worker's inability to work, unless these issues are in question in the appeal.

(c) If the department or its representatives wish to communicate with the examining or treating medical providers concerning the issues in question in the appeal, and no written authorization from the worker or the worker's representative has been obtained, the communication must either be:

(i) In writing, including by email, sent contemporaneously to all parties with a distinct notice to the provider that any response must be in writing, including by email;

(ii) In person, by telephone, or by videoconference, at a date and time mutually agreed to by all parties, with the worker or the worker's representative given the opportunity to fully participate; or

(iii) Pursuant to a properly scheduled and noted deposition.

(d) Written authorization is not required if the worker fails to identify or confirm the examining or treating medical provider as a witness as required by the board.

(4) (a) Except as provided in (b) and (c) of this subsection, after an appeal has been filed under RCW 51.52.060(2), a conference has been held to schedule hearings, and the worker has named his or her witnesses, the worker and the representative for the worker, if any, shall not have contact to discuss the issues in question in the appeal with any medical provider who has examined the worker at the request of the department pursuant to RCW 51.36.070, unless written authorization for contact is given by the department or its representatives. Written authorization is only valid if given after the date that the appeal is filed and expires ninety days after it is signed.

(b) If the worker or the worker's representative wishes to communicate with a medical provider who has examined the worker pursuant to RCW 51.36.070, and no written authorization from the department or its representative has been obtained, the communication must either be:

(i) In writing, including by email, sent contemporaneously to all parties with a distinct notice to the provider that any response must be in writing, including by email;

(ii) In person, by telephone, or by videoconference, at a date and time mutually agreed to by all parties, with the department or its representatives given the opportunity to fully participate; or

(iii) Pursuant to a properly scheduled and noted deposition.

(c) Written authorization is not required if the department fails to identify or confirm the examining medical provider as a witness as required by the board.

(5) Upon motion by either party, the industrial appeals judge assigned to the case may determine whether a party has made itself reasonably available to participate in an in-person, telephone, or videoconference communication as provided in subsections (1)(c)(ii), (2)(b)(ii), (3)(c)(ii), and (4)(b)(ii) of this section. If the industrial appeals judge determines that a party has not made itself reasonably available, the judge may determine appropriate remedies including but not limited to setting a date and time for the contact being requested by a party, sanctioning the party who has not reasonably made itself available, or both.

(6) This section only applies to issues set forth in a notice of appeal under RCW 51.52.060(2).

(7) This section does not limit the reporting requirements under RCW 51.04.050 and 51.36.060 for issues not set forth in a notice of appeal.

(8) The department and board may adopt rules as necessary to implement the provisions of this section.

(9) A medical provider who discusses issues on appeal with the department or with any employer or worker or representative of any employer or worker in violation of this section shall not be held liable for such communication. [2009 c 391 § 1.]

Application—2009 c 391: "This act applies to orders entered on or after July 26, 2009." [2009 c 391 § 2.]